

Office of Chief Counsel
Internal Revenue Service

memorandum

TL-N-6809-99

JForsberg

date: December 16, 1999

to: Wanda Gorell
Technical Support Branch, ESB
North Central District

from: District Counsel, North Central District

subject: [REDACTED]
Statute of Limitations on [REDACTED] Interest Claim

Our advice has been requested as to whether, under the facts set forth below, a claim for refund of deficiency interest filed by [REDACTED] for its taxable year [REDACTED] is barred by the statute of limitations. For the reasons set forth below, we are of the opinion that the claim is barred.

FACTS

[REDACTED] has a taxable year ending December 31. Pursuant to extension, [REDACTED] filed a timely return for its taxable year [REDACTED] on [REDACTED]. A series of consents were subsequently entered into to extend the statute of limitation on assessment for that year, culminating with a Form 872-A (Special Consent to Extend the Time to Assess Tax) executed on [REDACTED].

On [REDACTED], a deficiency in income tax in the amount of \$[REDACTED] was assessed against [REDACTED] for [REDACTED]. The deficiency and interest thereon was paid by an advance payment made on [REDACTED]. On [REDACTED], a second deficiency for [REDACTED] was assessed in the amount of \$[REDACTED]. This deficiency and the interest thereon was paid by an advance payment made on [REDACTED]. The second deficiency was assessed pursuant to a Form 870-AD executed in [REDACTED] (the "September Form 870-AD"), which included reservation clauses relating (1) insurance expenses paid to [REDACTED] and related adjustments to dividend income and subpart F income, (2) the allocation and apportionment of research and development expenses in determining the taxable income of [REDACTED], and (3) the allocation of royalty income under section 482 from [REDACTED] and [REDACTED] to the [REDACTED] under section 482. Pursuant to the standard terms of the Form 872-A, the agreement to extend the statute of limitations on assessment

for [REDACTED] expired on [REDACTED], with the assessment of the second deficiency.

Following the execution of the September Form 870-AD, [REDACTED] filed the following Forms 1120X for the year [REDACTED]:

Date	Amount	Issue
[REDACTED]	[REDACTED]	Depreciation rollovers ("Depreciation Claim")
[REDACTED]	[REDACTED]	Insurance expenses paid to [REDACTED] ("Insurance Claim")
[REDACTED]	[REDACTED]	Allocation and of R & D expenses to [REDACTED] ("R & D Claim")
[REDACTED]	[REDACTED]	Allocation of royalty income from [REDACTED] and [REDACTED] ("Royalty Claim")
[REDACTED]	[REDACTED]	Foreign tax credit carryover ([REDACTED] and [REDACTED]) and Computation error in computing [REDACTED] Claim ("FTC/Computation Claim")

The Depreciation Claim sought a refund based on adjustments to [REDACTED]'s original return position. The other four claims sought refunds based on issues reserved in the September Form 870-AD. Neither the Royalty Claim or the FTC/Computation Claim specifically requested a refund of deficiency interest. The Depreciation Claim requested a refund of a specified amount of tax plus "such other amounts as may be legally refundable plus interest." The [REDACTED] Claim and the [REDACTED] Claim requested refunds of specified amounts of tax plus "such other and greater amounts as may be legally refundable together with all entitled interest." None of the claims raised any specific issues as to the amount of the deficiency interest to be refunded or the manner in which such interest should be calculated.

On [REDACTED], tax of \$[REDACTED] was abated based on the allowance of the (1) the Depreciation Claim, (2) a portion of the [REDACTED] Claim (\$[REDACTED]), (3) the FTC portion of the FTC/Computation Claim (\$[REDACTED]), and (4) \$[REDACTED] of additional foreign tax credit. On [REDACTED], Appeals issued statutory notices of claim disallowance with respect to (1) the balance of the [REDACTED] Claim (\$[REDACTED]), (2) the [REDACTED] Claim, (3) the Royalty Claim, and (4) the balance of the FTC/Computation Claim (\$[REDACTED]).

[REDACTED] and Appeals executed a series of Forms 907 extending the time for [REDACTED] to bring suit on the Royalty Claim. The Forms 907 were as follows:

Date Executed
by Taxpayer

Date Executed
By Appeals

Date to Which Extended

[REDACTED]

[REDACTED]

[REDACTED]

On [REDACTED] tax of \$ [REDACTED] was abated based on allowance of Royalty Claim.

On or about [REDACTED], the taxpayer filed a claim for deficiency interest for [REDACTED] based on the [REDACTED] cases (the "[REDACTED] Claim") (relating to the date from which interest accrues on a deficiency for a year where the taxpayer elected to apply an overpayment shown on that year's return to the succeeding year's estimated taxes. See, [REDACTED] [REDACTED]).

DISCUSSION

As set forth in I.R.C. § 6511(a), the general statute of limitations on the filing of a claim for refund provides that claims for refund must be filed within 3 years from the time the return was filed or within 2 years from the time the tax was paid. In the present case, the taxpayer's [REDACTED] interest claim was not filed within the general 3-year/2-year statute of limitations. Section 6511(c)(1), however, provides that where the statute of limitations has been extended by agreement pursuant to section 6501(c)(4), the period for filing a claim shall not expire prior to 6 months after the expiration of the assessment period as extended. In the present case, the period for assessment, as extended by the Form 872-A, expired on [REDACTED], and, accordingly, the statute of limitations for filing refund claims did not expire until [REDACTED]. Thus, while the [REDACTED] Claim itself was not timely filed, the four Forms 1120X filed between [REDACTED] and [REDACTED], were timely filed. The issue then is whether the four Forms 1120X provide a basis for a refund of deficiency interest based on a [REDACTED] argument.¹

[REDACTED] Claim and Disallowed Portions of the [REDACTED] and FTC/Computation Claims

As notices of claim disallowance were issued with respect to the [REDACTED] Claim and portions of the [REDACTED] and FTC/Computation Claims on [REDACTED], and as no further action was taken with respect to those claims or portions thereof by the taxpayer, any

¹ The Depreciation Claim filed on [REDACTED], does not come into play as it sought a refund of amounts paid per the return, not per a deficiency assessment.

refund based thereon was barred after [REDACTED], by virtue of sections 6514 and 6532 and the running of the two-year period for filing suit. Therefore any refund of deficiency interest related to those claims after [REDACTED], is also barred.

Allowed Portions of the [REDACTED] and FTC/Computation Claims

The balance of the [REDACTED] and FTC/Computation Claims were ultimately allowed and, accordingly, no notices of claim disallowance were ever issued with respect to those claims. In our view the principal issue with respect to these claims is one of whether the claims were factually and legally sufficient to raise a claim for deficiency interest based on the [REDACTED] issue.

When a taxpayer files a claim for refund of tax with respect to which the taxpayer has previously paid deficiency interest, implicit in the claim is a claim for refund of the associated deficiency interest. See, Brandt & Brandt Printers v. United States, 300 F.2d 457, 461 (1962) (claim for refund of tax includes claim for refund of interest and penalties paid with respect to tax). It does not follow, however, that an implicit claim for deficiency interest reaches all aspects of the prior interest computation, be they factual, legal, or computational. In our view, an implicit claim for deficiency interest (as made by the FTC/Computation Claim) or a general claim for deficiency interest (as made in the [REDACTED] Claim) raises only the ground for recovery that the deficiency interest was overstated because the deficiency upon which interest was computed was overstated. Errors in the manner of computing the deficiency interest that are not related to the reduction in tax (*i.e.*, errors that would provide an independent basis for a relief even if the tax were not overstated) are not raised by a general or implicit claim for deficiency interest. In our view, the claims in question cannot possibly be viewed as having raising the [REDACTED] issue and, accordingly, were factually and legally insufficient as to that claim. Angelus Milling v. Commissioner, 325 U.S. 293, 297-99 (1944).

We note that there may also be an issue in the present case as to whether the Service's actions in refunding tax and deficiency interest per the [REDACTED] and FTC/Computation Claims constituted an implicit disallowance of any additional amounts (including additional deficiency interest), thereby commencing the 2-year limitations period of sections 6532 and 6514. However, given that the claims were insufficient to raise the [REDACTED] issue, we do not believe it is necessary to resolve this issue.


Royalty Claim

For the same reasons discussed above with respect to the [REDACTED] and FTC/Computation Claims, we believe that the Royalty Claim itself was factually and legally insufficient to raise a

claim for deficiency interest based on the [REDACTED] issue. The facts relating to the Royalty Claim, however, are somewhat different. The period within which [REDACTED] could bring suit on the Royalty Claim was extend to [REDACTED], by virtue of a series of Forms 907 (Appeals had issued a statutory notice of claim disallowance with respect to the Royalty Claim on [REDACTED]). Prior to that date, on [REDACTED], [REDACTED] filed the [REDACTED] Claim. Arguably, the [REDACTED] Claim could be viewed as amending the Royalty Claim prior to the expiration of the time in which to bring suit on the claim. We believe, however, that such an argument would fail for at least two reasons. First, it is generally the Service's position that a claim for refund can not be amended after the expiration of the statute of limitations for filing a claim for refund. See, AOD 1999-014 (announcing nonacquiescence to Mutual Assurance, Inc. v. United States, 56 F. 2d 1353 (11th Cir. 1995)). Second, and more importantly, the period within which suit could be brought on the Royalty Claim expired on [REDACTED]. Even if the [REDACTED] Claim amended the Royalty Claim, it did not extend the time in which to bring suit on the Royalty Claim and accordingly the claim is barred under sections 6532 and 6514.

If you have any questions respecting this matter, please call Jack Forsberg at 290-3473, ext. 227.

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cc: Assistant Chief Counsel (Field Service); and
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